



Electricity Authority
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New Zealand

Manawa Energy Submission: Inefficient Price Discrimination in very large electricity contracts

Introduction

Manawa Energy (**Manawa**) welcomes the opportunity to provide a submission to the Electricity Authority (the **Authority**) on its Inefficient Price Discrimination in very large electricity contracts Consultation paper (the **Consultation Paper**). The Consultation Paper proposes:

1. A prohibition on materially large contracts (equal to or exceeding net 150MW) when one of the specified conditions for efficiency is not made out;
2. Disclosure requirements for all materially large contracts; and
3. A voluntary clearance regime.

At the time of publishing the Consultation Paper the Authority also made an urgent Code amendment as an interim response to concerns identified. This submission only relates to the proposed permanent arrangements presented in the Consultation Paper.

Manawa's interest in these changes

Manawa is New Zealand's largest independent¹ electricity generator and developer, currently responsible for around five percent of Aotearoa New Zealand's existing generation capacity.

Over 99% of our generation comes from sustainable hydroelectricity generated from 26 small to medium schemes around the country. These schemes support economic growth and resilience in local communities across New Zealand. Manawa has a clear strategy to grow this further by building a diverse portfolio of development options and further optimising our existing assets.

Our position is unique among the industry as we made the choice to sell our mass market retail customer base – actively shifting from being a generator-retailer to the largest independent generator. This innovative business approach has been enabled due to our ongoing confidence in the wholesale market design and provides us with a unique perspective from which to analyse the regulatory settings in the wholesale market.

We still retail electricity to approx. 600 large commercial and industrial customers and for this reason we are particularly interested in contracts targeting the sale of large volumes of electricity as this is a core component of our business model.

¹ By independent we mean without an integrated mass market retail business.

Manawa's views

Based on the material presented in the Consultation Paper, we remain unconvinced that the Authority's concerns around inefficient price discrimination justify intervention².

We are however pleased that in further developing the problem definition and designing the changes to the Code, the Authority has considered feedback received around the need for a clearly targeted, surgical intervention. This should help to mitigate the risk of unintended consequences arising under the new arrangements.

While we note the Authority's view that the new prohibitions on materially large contracts where one of the conditions for efficiency is not made out, will only "bind" on a handful of occasions every decade, the broader arrangements will have some ongoing compliance/operational implications for participants. While these might be viewed as being minor, we encourage the Authority to remain cognisant of the overall regulatory/compliance burden it is creating for participants through its various workstreams as this adds to the cost and complexity of operating in the NZ electricity market.

The remainder of our submission focusses on ensuring that the proposed permanent arrangements are appropriately "tuned", with a specific focus on the criteria associated with the proposed prohibition arrangements.

Potential unintended implications of proposed changes

Our primary focus in reviewing the proposed permanent changes to the Code has been to ensure that the activities of a participant such as Manawa wouldn't be unintentionally restricted.

We strongly support the Authority's decision to not extend the proposed arrangements to apply to contracts such as PPA's. We agree that these arrangements are unlikely to have outcomes which are detrimental to the long-term interests of consumers as they are generally focussed on increasing the supply of renewable generation and will positively contribute to the transition.

We remain concerned that potential interpretations of the reference to "*physical consumption of electricity*" in the proposed prohibition arrangements could lead to any Contract for Differences (CfD) to be considered a financial contract and not a physical contract³. As the Tiwai deal is a CfD we don't anticipate this would be the Authority's intent.

It is also possible that the clause could be more broadly interpreted to apply to physical supply of electricity by a generator to a retailer for any purpose. While our understanding of the intent of the policy is that it would only apply to any contracts for the sale of electricity to large loads, not mass-market customers, this is not entirely clear in the drafting

Manawa requests the Authority reviews the proposed drafting to ensure the purpose is achieved without creating any unintended outcomes as outlined above. This enhanced clarity will ensure that the arrangements operate as intended going forward and that innovation is not inadvertently restricted.

² Our previous submission on this issue in December 2021, supported a comprehensive study into whether the "use it or lose it" provisions in longer term contracts with large users may be problematic to ensure a full understanding of the potential problems, including likely magnitude and frequency of occurrence. We did not however believe that there would be much to be gained from intervention in this area, even if evidence of a problem was identified given the unique nature of the Tiwai arrangements. We also expressed concern that a number of the originally proposed solutions were highly interventionist in nature.

³ IAS 39 Meaning of delivery <https://www.ifrs.org/content/dam/ifrs/news/updates/ifrs-ic/2005/august-2005-ifric-update.pdf>

Concluding remarks

The industry is currently undergoing a period of substantial change where unprecedented investment across the supply chain will be required to meet New Zealand's electrification objectives. It is critical that changes to the wholesale market design be evidence based and carefully targeted to ensure that innovative, competitive practices are not inhibited and investors' confidence in the market remains strong. Certainty around the regulatory/policy settings is an important pre-requisite for capital to be made available for further investments in renewable generation.

We continue to strongly support the Authority prioritising its efforts on effectively supporting the transition.

For any questions contact Fiona Wiseman. Regulatory Manager